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No. 72.

Supreme Court of the United States.

October Term, 1907.

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MATEO CARIÑO,
Plaintiff in Error,

vs.

THE INSULAR GOVERNMENT OF THE PHILIPPINE ISLANDS.

In Error to the Supreme Court of the Philippine Islands.

REPLY BRIEF.

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Supreme Court of the United States,

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MATEO CARIÑO, Plaintiff in Error, vs. THE INSULAR GOVERNMENT OF THE PHILIPPINE ISLANDS.	In Error to the Supreme Court of the Philippine Islands.

Brief in Reply for the Plaintiff-in-Error.

The Brief of the Honorable Solicitor General presents three contentions:

1. That this case is not reviewable in this Court, on writ of error.

II. That no reservation of land was ever specifically set aside by the Spanish Government for the Igorrotes, from which he concludes that all the lands occupied and claimed by the Igorrotes, individually or as a tribe, were crown lands; that prescription did not run against the Spanish crown; and that ownership of such lands could only be obtained by administrative action.

III. That the American Legislation since the cession has not altered Cariño's status, nor added any virtue to his wrongful possession, which the Solicitor General claims is that of a "mere trespasser."

We shall reply to these points in order.

I.

This Court has jurisdiction to review the judgment in the case at bar on writ of error.

The learned Solicitor General devotes nearly one-quarter of his brief (18 pages) to an argument that review in this cause should have been sought in this Court by appeal instead of by writ of error. This argument proceeds, however, upon a mistaken assumption as to the nature of the proceeding.

Judgments of the Supreme Court of the Philippine Islands are reviewable in this Court "on appeal or writ of error" by the party aggrieved, in the same manner, under the same regulations and by the same procedure, *as far as applicable,* as the final judgments and decrees of the Circuit Courts of the United States (32 U. S. Stat., 695, quoted on p. 30 of Government Brief). The only difficulty in applying the test provided by this Statute lies in the fact that the jurisdiction of the United States Circuit Court does not cover the whole field of general jurisprudence. They are courts of limited and purely Federal jurisdiction, and there are many important classes of controversies which cannot come before them, such as matters of marriage and divorce, adoption and filiation, probate and administration, and numerous others, all of which properly come within the jurisdiction of the Philippine Courts, and may be reviewed by this Court if a jurisdictional question or amount is involved. There may, therefore, be many cases in which this Court is called upon to review a Philippine judgment, which cannot be immediately classified and assigned to some definite category already established and recognized in the Circuit Courts.

A similar situation has existed for many years in regard to the review by this court of judgments of the highest court of the District of Columbia, where the procedure is also assimilated by statute to the review of adjudica-

tions of the Circuit Courts. (See Sec. 705 U. S. Rev. Stat., 27 U. S. Stat., p. 434, 31 U. S. Stat., 1189, 1227). The courts of the District of Columbia being of plenary, as distinguished from merely *federal* jurisdiction, cases therefrom have come up for review in this Court which did not fall within any distinct category cognizable in the Circuit Courts, and this Court has repeatedly held that unless a given controversy was technically and specifically a *suit in equity,* it was reviewable on writ of error.

This question was fully considered in *Ormsby* v. *Webb,* 134 U. S. 47, which was a writ of error to review a judgment of the General Term of the Supreme Court of the District of Columbia, affirming an order of the Special Term admitting a will to probate. It was objected that the case was "one of equity jurisdiction, and could be brought here only by appeal" (p. 48). This Court, by Mr. Justice Harlan, held:

"A proceeding in this District for the probate of a will, although of a peculiar character, is nevertheless a case in which there may be adversary parties, and in which there may be a final judgment affecting rights of property. It comes within the very terms of the Act of Congress defining the cases in the Supreme Court of this District, the final judgments in which may be re-examined here. *If it be not a case in equity, it is to be brought to this Court on writ of error, although the proceeding may not be technically one at law as distinguished from equity.*"

In *Ormsby* vs. *Webb,* there had been a jury trial of the issues, but the same rule was applied in *Campbell* vs. *Porter,* 162 U. S., 478, a probate case which had been tried by the Court.

In *Metropolitan Railroad Co.* v. *District of Columbia,* 195 U. S., 322, the question arose on the review of an adjudication in a condemnation proceeding, and this Court held, by Mr. Justice White, "that a proceeding involving the exercise of the power of eminent domain is essentially

but the assertion of *right legal in its nature,*" and that writ of error was the proper method of review.

Proceedings by mandamus and prohibition have also been held to be at law, and hence reviewable by writ of error.

See

Steinmetz v. *Allen,* 192 U. S., 543.
Lowry v. *Allen,* 203 U. S., 476.
Smith v. *Whitney,* 116 U. S,. 167.

The proceeding for land registration under Act No. 496 of the Philippine Commission is something of a novelty in Federal jurisprudence, but it is manifestly a proceeding at law, and not a suit in equity.

It is expressly stated in the Act: "The proceedings upon such application shall be proceedings *in rem* against the land and the buildings and improvements thereon" (Sec. 2).

Thus it is analogous to an action in replevin or a proceeding for condemnation, both of which are *in rem,* and are at law. It is elementary that equity acts not *in rem,* but *in personam,* and that "a naked question of title" is not cognizable in a court of equity at all.

See *Massie* v. *Watts,* 6 Cranch, 148, at 158 and 159, Marshall, *C. J.*
Boston, &c., Mining Co. v. *Montana Ore Co.,* 188 U. S., 632, at page 641.

Applications for registration under the Act can only be made by persons claiming to own or to have the power of disposing of "the *legal estate* in fee simple" (Sec. 19). The proceeding does not lie to declare or enforce equitable rights or titles. Its object is merely to declare and record the *legal* title in such manner as to make it conclusive against the world at large. The decree of registration "binds the *land,*" and is by force of the statute "conclusive upon and against all persons" (Sec. 38), but it is not a personal decree against any one.

The adjudications of this Court of Land Registration are more than once styled "judgments" as well as "decrees" in the act itself (Secs. 17, 36), and there is in any event no cabalistic power in the word "decree," whereby its use can convert a proceeding at law into a suit in equity. An adjudication admitting a will to probate is almost invariably styled a decree, but, as we have shown, a probate case is at law.

The fact that the review of determinations of the lower court by the Court of First Instance is upon appeal is immaterial, for that is the prescribed method of review in special proceedings in the Philippine Islands.

> Philippine Code of Civil Procedure, Act 190, Phil. Com., §498.

By the Land Registration Act (Sec. 2), the proceedings thereunder are assimilated to "special proceedings," and they also conform to the definition thereof in Sec. 1 of the Code of Civil Procedure, viz.: "An 'action' means an ordinary suit in a Court of justice, by which *one party prosecutes another* for the enforcement or protection of a right, or prevention or redress of a wrong; *every other remedy furnished by law is a special proceeding.*"

The method of review in the courts below, does not alter the essential nature of the case for purposes of review in this Court.

Moreover, the review of the Court of First Instance by the Philippine Supreme Court was by "bill of exceptions," a typically *legal* method (Rec., p. 178).

The learned Solicitor General seeks to assimilate these proceedings before the Land Court to "Bills of Peace," or "Bills *Quia Timet.*" But these proceed against the *persons* from whom the complainant anticipates disturbance and seek to restrain them from interference with an already established *legal* title. Proceedings under the Land Registration Act merely establish the *legal*

title, and the Act itself prescribes the legal consequences of such registration. Such bills in equity as those mentioned can only be maintained to remove an existing cloud, or restrain some potential disturbance; they necessarily imply the existence of a defendant with some actual adverse claim. The proceeding for registration, on the other hand, aplies primarily to a good and unquestioned title; it is directed against the land itself, and not against any individuals; and its result, by force of law, binds the whole world. It is distinctly and manifestly a proceeding at law to establish a naked legal right, and has no connection with equity procedure, or equity jurisprudence.

The objection to the method of review is, therefore, not well taken.

II.

Cariño's rights existed as property rights protected by the Treaty independent of registration under Spanish administrative regulations.

The learned Solicitor General asserts that the Igorrotes "were never brought under the civil or military government of the Spanish Crown." If from this it be argued that the Igorrotes were not under the protection of the guarantees of property afforded by the Spanish law, the answer is that neither were they then subject to Spanish administrative regulations and that their property rights depend solely on their own native laws. It also follows from this premise that their lands could not have been Spanish Crown lands.

Even accepting as a fact (for the sake of argument) that the Spanish Government never made any specific reservation of land for the Igorrote tribe, this is ex-

plained by the statement in the Hon. Solicitor General's brief; "nor did the Spanish Government ever attempt to interfere in their internal tribal affairs."

In other words, the Spanish Government left their "tribal affairs",—their lands. tenures and customs,—as they found them. Hence, there was no occasion to make any "reservation of land" for the Igorrotes. That the Igorotes were the owners and possessors of land, both as a tribe and individually, is abundantly established, and that the right of the aborigines in that regard were recognized and safeguarded by the Royal Decrees and the Spanish law is demonstrated by the extracts to be found in the original brief.

It is claimed that there is no analogy between the rights of Indians in the United States and the rights claimed for the Igorrotes, as it is said that our Courts recognized no Indian rights of property except those conferred by treaty or by concessions or reservations made by the Government.

This is an error which an examination of the Indian Treaties, or the decisions of this Court will dissipate. For instance: In *Doe* v. *Wilson*, 23 Howard, at p. 461, the Court says:

> "By the Treaty of Oct. 27, 1832, made by the "United States, through Commissioners, with the "Pottawatomie tribe of Indians of the State of In-"diana and Michigan Territory, *said Nation ceded "to the United States their title and interest in and "to their lands* in the States of Indiana and Illinois, "and Michigan Territory, south of Grand River.
>
> "*Many reservations were made* in favor of Indian "villages jointly, *and to individual Pottawatomies* " * * * ; *to these, the Indian title remained as "it stood before the treaty was made.*"

And the Court upheld a conveyance in fee simple made by one of the individual reservees.

"Although the Government alone can purchase

"lands from Indian Nations, it does not follow that "when the rights of the Nation are extinguished an "individual of the nation who takes as private "owner cannot sell his interest" (p. 463).

See also *U. S.* v. *Paine Lumber Co.*, 206 U. S., 467.

But granting again, for the sake of the argument, that the analogy between the status of the North American Indian, under our domination, and that of the Igorrote under Spanish dominion, is not absolute, it is the position of the latter which must determine the controversy.

The difference between the two as indicated by the decision is that the Indians in America, as a rule, held their lands as Tribes, and individual titles were only known and required by the initiative of the United States Government as was done in the case of *Doe* v. *Wilson, supra;* while the Igorrotes recognized not only tribal tenures, but individual ownership with the incidents of inheritance and the power of alienation. This is a distinction which enforces the claims of Cariño, and explains why Spain never assumed the position taken by the United States. The tribal ownership in the course of the subversive changes wrought by the advance of civilization militated against the individual Indian to such an extent that as guardian and protector of the Indian, the U. S. Government had to intervene in his behalf (Stephens *v.* Cherokee Nation, 174 U. S., 445). In the Philippines, where among the Igorrotes, at all events, individual ownership was freely recognized, no such parental guardianship over Indian lands was called for, and none was ever exercised.

The difference between the tenure of lands by the aboriginals in America, and those in the Philippines is further made clear by the Law of March, 1642, cited at p. 35, of our original Brief, which reads in part:

"We order that the sale of lands be made with such care that there be amply left to the Indians

those which belonged to them, *whether individually*, or in communities, &c."

There is no finding and no evidence that the lands owned by Cariño and his ancestors for several generations were ever Crown Lands, or claimed as such by the Spanish Government. The Regulations of 1880, as to composition of Titles to public lands, cited by the Solicitor General, define what will be regarded as Royal Land as:

"All lands whose lawful ownership is not vested "in some private person."

At that time Cariño's father was the owner of the lands and in lawful possession thereof, by inheritance from his father, whose actual ownership has been traced to a period antedating the American occupation by fifty years. The appearance of fences estimated by an experienced surveyor to be not less than 100 years old indicates a well defined private ownership as far back again, and there is no evidence or finding of any other *status* at any time.

All the provisions of law cited by the Solicitor General, either Spanish or American, rest upon an established or conceded premiss that the lands under consideration are Royal or Public lands, and are applicable only to lands which are concededly or unquestionably of that character. This basis for their application is wanting in the present case.

As to prescription against the State under the Spanish law ripening an adverse possession of Royal lands into an impregnable title, the original brief has fully anticipated any objection urged, and it would be repetition to refer in detail to the various laws, from centuries back down to the Civil Code of 1889, which recognize the effect of such prescription.

It is pertinent to recall here, that prescription need not be invoked in the present case, until the defendant

in error has established that the lands in question were Royal lands, and has defeated the claim of title by individual ownership in the Cariño family for generations back.

The Court of Land Registration found at the threshold a possession so long and so unquestioned that it had ripened into ownership even against the State, owing to the effect of prescription under Spanish law, and did not find occasion to pass more specifically as an independent question of law, upon the claim of title by devise or inheritance which Cariño also asserted,—but this holding that in any event, and even without the title by devise, Cariño was entitled to registration of his title, does not hinder or defeat the title by devise or inheritance, which Cariño has continuously asserted and, we submit, amply established, as shown in the Findings of the Court below.

The Solicitor General insists that under the Regulations of April 17, 1894, all claims to public lands not availed of under the Decree of June 25, 1880, should be, thereafter, barred, and that in consequence whatever rights Cariño had, were lost by his not having applied for "adjustment or composition" of his claim under the Decree of 1880, prior to the promulgation of the Regulations of April 17, 1894.

The answer to this contention is twofold:

I.—The Decree of 1880 applied only to claims upon Royal lands.

II.—Even as to claimants of Royal lands it did not apply to those whose adverse possession had ripened into full ownership.

I.—That it related only to public lands is conceded by the Solicitor General and the language clearly confines it to such lands.

There is no finding, as there is no evidence, that the lands of Cariño were ever public lands.

II.—It did not apply to occupants of public land whose adverse possession had ripened into full ownership.

We quote from the Ministerial Preface to the Decree explaining its purpose:

PREFACE.

"The immense and immediate profit which must "result to all classes of interests, public as well as "private, *from the substitution of full ownership,* "with all the privileges which accompany this real "right, *for the mere possession of the lands,* have "long counselled the adoption of the provision con- "tained in the following regulations."

* * * *

ART. 4.—For all legal effects those will be considered *proprietors* of the Royal lands herein treated who may prove that they have possessed the lands without interruption during the period of ten years by virtue of a good title or in good faith.

ART. 5.—In like manner, those who without such title deeds may prove that they have possessed their said lands without interruption for a period of twenty years, if in a state of cultivation, or for a period of thirty years, if uncultivated, *shall be regarded as proprietors thereof* * * *.

ART. 6.—Interested parties *not included within the two preceding articles,* may legalize their possession, and thereby *acquire the full ownership of the said lands by means of adjustment proceedings,* etc., etc.

It is clear from these provisions that persons who without title deeds had remained in possession without interruption for thirty years, even if the lands were uncultivated, were regarded as "proprietors." In the words of the Colonial Minister who reported the law, for

the mere possession of the land" there had been substituted " full ownership." Such proprietor required no "adjustment or composition"; only those "not included within the two preceding articles," says *Art. 6*, were empowered to "*legalize that possession, and thereby acquire the full ownership of such lands by means of adjustment proceedings.*"

Parties included within Articles 4 and 5 were proprietors of the lands they had held for ten, twenty, or thirty years, and clearly recognized as such.

Cariño was not, therefore, called upon to seek adjustment or composition under the Decree of June, 1880, nor was he therefore barred by the Regulations of 1894.

It appears that he made some application under the Regulations of 1894, but exactly what it was or whether it referred to the lands included in the present controversy did not appear, and the Court below made no finding that such proceedings did relate to such lands.

Moreover, even if Cariño had made an ill-advised effort for relief, such an attempt to secure peace could not be interpreted as a surrender of the right to property which the findings show him to have substantiated in the present proceedings.

The Solicitor General claims that "ancient possession" could not be ripened into a fee simple title except by proof *before an administrative officer*, his affirmative action on the claim, *and a compliance with the regulations prescribed.* To this claim that the law left it to "an administrative officer" to determine the validity of land titles, we oppose the formal language of the law, which declares that the occupants of lands for the periods mentioned " shall be regarded as proprietors" * * "will be considered proprietors for all effects." The "legal effect" is thus determined by the law, and is not left to "an administrative officer." The term, "may prove that they have possessed the land without interruption' can mean no more than the privilege of establishing their claims judicially by proof whenever ques-

tioned or whenever it may become requisite to do so (as in the present case). The ordinary courts will not be divested of general jurisdiction nor will administrative officers be invested with judicial jurisdiction by mere inference; and to support the Solicitor General's claims there is nothing but an inference and that is rebutted by the context.

The decree of 1880, Art. 6, Subd. 5, provides that "those who were in possession of lands belonging to the State and may acquire *the ownership thereof*, by paying to the public treasury the value of lands at the time such possessors began their *unauthorized enjoyment* of the same. Articles 4 and 5 declare the uninterrupted possessors to be "the proprietors * * for all legal effects." This is clearly the ownership, the "full ownership," in the language of the Colonial Minister, which the law has thus "substituted" for "the mere possession." Proprietors having the full ownership of the land, can have no need to apply, under Article 6, as persons "in possession of lands belonging to the State" in order to "acquire ownership thereof."

There is nothing which such legally recognized proprietors are called upon to do or can do, to quote the language of the Solicitor General, in "compliance with "the regulations prescribed."

The regulations are for those whose "unauthorized enjoyment" has not ripened into "ownership" and who, therefore, are authorized to "acquire the ownership," by compliances with the regulations. There is, therefore, no requirement for the *owners* of property to make any application to any administrative office, and no occasion for his "affirmative action."

If the forfeiture provision in the Royal Decrees of 1880 and 1894 was intended to apply to such cases as Cariño's, then it was contrary to the fundamental law of Spain, as shown in our main brief. No attempt was ever made by the Spanish Government to enforce it, and it is a somewhat extraordinary claim that the United States Govern-

ment should now seek to apply it, regardless of the constitutional guarantees of both countries and the added protection of the Treaty.

Against the mass of Spanish legislation favoring the Indians and protecting their rights and their property against usurpation, the Solicitor General makes ironical reference to *Law 1, Title 12, Book 4,* of the Laws of the Indies as providing that subjects of Spain to whom allotments of land were made, were also allowed "the "compulsory service of the Indians" as a corollary incident to the grant.

Perhaps the Solicitor General did not observe that in *Law 15, Title 1, Book 6,* of the Laws of the Indies (pp. 20-21, Brief of Plff. in Error), it is commanded that the Indians "*be paid for their work and service, and be well "treated, and receive no injury.*"

We do not find in this compulsory impressment of service to the benefit of settlers in a distant and uncivilized country, accompanied with a requirement for compensation and good treatment, and a forbiddance of any injury, any ground for doubting or disturbing the very frequent and very explicit recognition of the Indians' right to property, to be found in the numerous laws cited in the original brief.

III.

Cariño's title had not been adversely affected by legislation since the cession.

The only legislation germane to the issue here, is Act 496 of the Philippine Commission, creating a Court of Land Registration, with a view to encouraging land owners to make a public record of their holdings, and thus create a modern and available system of ready examin-

ation and identification of land titles. It was this invitation and encouragement to which Cariño responded, establishing to the satisfaction of the Court of Land Registration his title to his land and obtaining the registration provided for by the law. It is this compliance with the law to which defendants in error take exception, and invoke another law of the Philippine Commission, No. 926, relating to *Public Lands*, the terms of which were not at the time applicable to the province of Benguet, to show that as an occupant of Public Lands, Cariño is not entitled to the relief provided by that law.

To this there is the double answer:

A. The lands claimed by Cariño never were public lands.

B. If they were public lands at any time, Cariño's adverse possession ripened into ownership and against Spain, and they ceased to be public lands long prior to the cession to the United States.

The learned Solicitor General lays much stress on the development of Benguet since the American occupation into an important summer resort—a "Philippine Sunca." But the desirability of a piece of private property has not been deemed a sufficient reason for evicting the owner since the somewhat famous case of Ahab, Rex *v.* Naboth, reported in 1st Kings, Chap. 21.

Respectfully submitted this 12th day of January, 1909.

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HOWARD THAYER KINGSBURY,
Counsel for Plaintiff-in-Error.

In the Supreme Court of the United States.

OCTOBER TERM, 1908.

MATEO CARIÑO, PLAINTIFF IN ERROR,
v.
THE INSULAR GOVERNMENT OF THE PHILIPPINE ISLANDS. } No. 72.

IN ERROR TO THE SUPREME COURT OF THE PHILIPPINE ISLANDS.

BRIEF FOR THE UNITED STATES AND THE INSULAR GOVERNMENT.

STATEMENT.

Mateo Cariño, the plaintiff in error, is an inhabitant of the province of Benguet, in the Philippine Islands. He is a member of the tribe of Igorrotes—savages, who were never brought under the civil or military government of the Spanish Crown during its occupancy of the islands. The Igorrotes retained their native laws and customs; administered justice among their people after their own fashion; rights of property, real and personal, passed among them by possession, through gift or barter, or by oral devise; and, as the people have never had a written language, there has never been any registry of ownership.

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The land, the right to the ownership of which is here in question, is situated in the township of Baguio, province of Benguet, island of Luzon. From the elevation of the region (5,000 to 7,000 feet), and the particularly favorable location of Baguio, early in the American occupation it was resorted to as a sanitorium for convalescents, and has since been so improved that it has become the *Simla* of the Philippines. It may not be improper to go outside of the record to state that it is the seat of the insular government during the hot months, of extensive hospitals and hotels, with numerous private houses, has a large garrison of American soldiers, is improved by water, lighting, and sewerage systems, and is connected by the famous Benguet road with the railroad system at Dagupan. These facts have raised lands in the immediate vicinity of the township and municipality of Baguio from the value of remote mountain grazing fields to that of town lots in an exclusive and limited summer resort.

The land in question has an area of about 150 hectares (375 acres), and the transcript shows (p. 153) that it has been in the possession of the immediate ancestors of Mateo Cariño for more than fifty years prior to the date of the ratification of the treaty of Paris; that it passed into the possession of plaintiff in error, by oral devise, on the death of his father in 1883 (p. 152); that neither plaintiff in error nor his father had ever lived on the land, but had always used it for grazing purposes, with some slight cultiva-

tion, and that for at least thirty years prior to 1899 it had been more or less completely inclosed (pp. 152, 153).

In the year 1894 a Spanish royal decree provided for the reversion to the state of all agricultural lands in the Philippine Islands title to which had not been registered by claimants thereto in accordance with a prior decree of 1880 (p. 183). Mateo Cariño made no effort to register his claim to ownership to these lands with the proper administrative officers until 1894, in which year he made application for registry, but failed to pay the necessary fee; subsequently, in 1897, he renewed his application as to some lands in the province of Benguet, but as he was the owner of various other tracts in the same province, and the lands are not described in the application, it is uncertain whether these lands were covered or not (pp. 154–156).

No administrative action was taken by the provincial or other officials of the Spanish insular government.

On February 21, 1901, Mateo Cariño filed in the Court of First Instance for the province of Benguet an information asking registry of these lands in his name (p. 154).

Prior to this date he had had interviews with one Clarke, of Manila, and negotiations as to the sale of the land (pp. 159, 160), and on October 3, 1901, Cariño executed a contract of sale of the lands to said Clarke, describing himself therein as being "*in possession*"

of the same, and agreeing, for the consideration of ₱6,000,

> to sell this land to Mr. M. A. Clarke as soon as he obtains from the Government of the United States, or its representative in the Philippines, real and definite title to said land in accordance with the laws in this respect enacted by the civil commission of the United States in the Philippines (pp. 137, 138).

On October 10, 1903, the President of the United States by proclamation reserved for military purposes certain property situated in the township of Baguio, province of Benguet, and a portion of the lands here claimed was within the reservation. The Benguet-Dagupan road was also constructed through it.

The petition of Cariño for registration of the land in his name was filed on June 22, 1903, and heard by the court of land registration; and, on March 4, 1904, a decree in favor of claimant was entered by said court (p. 6, et seq.).

Appeal from said decision, on behalf of the Philippine government, was taken to the court of first instance of the province of Benguet, was tried before said court *de novo*, and upon April 4, 1905, the court disallowed the petition of the petitioner, Cariño, and entered a decree against him (p. 177).

An *appeal* from the judgment of the court of first instance was properly prosecuted to the supreme court of the Philippine Islands (pp. 177–179), and on December 6, 1906, after a full hearing, the decree of the court of first instance was affirmed, all the judges concurring in the result (pp. 179–183).

From the foregoing decree of the supreme court of the Philippine Islands this writ has been prosecuted (pp. 184–190).

The plaintiff in error makes the following assignments of error in the prosecution of this writ:

1. The court erred in holding that prescription did not run against public agricultural lands of the Kingdom of Spain in the Philippine Islands during Spanish sovereignty.

2. The court erred in holding that a grant of title of public agricultural lands in the Philippine Islands could not be presumed from immemorial use and occupation.

3. The court erred in holding as a conclusion of law from the facts of record that title to the land involved in this proceeding had not vested in the plaintiff.

4. The court erred in holding that Mateo Cariño, plaintiff herein, was not the owner in fee simple of the land involved in this proceeding, and was not entitled to its registration under the provisions of the land registration act of the Philippine Islands.

5. The court erred in affirming the decision of the trial court ordering the dismissal of plaintiff's application.

THE LAWS INVOLVED.

From the earliest occupation of the Indies by the Spanish, laws and regulations as to real property were enacted and enforced. Provision was made for the grant and occupation of public lands in the conquered territory by subjects of Spain who were

colonists, and for the protection of title in natives of said territory who were in occupation and could prove exclusive and adverse possession for the periods prescribed in such laws and regulations.

Recognizing fully the industry and erudition of counsel for plaintiff in error as shown by their collection of the Spanish texts contained in the body and appendix to their brief, it is respectfully urged on behalf of the defendant in error that, while interesting to those curious in the origin of the Spanish law, they, for the most part, have no application to the few, simple, and well-defined questions presented for the consideration and decision of this court.

At a very early date the Spanish laws provided for the assignment of public lands in the Indies to the subjects of the Crown.

Law 1, title 12, book 4 of the *Recopilacion de Leyes de las Indias*, provides:

> In order that our subjects may be encouraged to undertake the discovery and settlement of the Indies, and that they may live with the comfort and convenience which we desire, it is our will that there shall be distributed to all those who shall go out to people the new territories, houses, lots, lands, *peonias*, and *caballerias* in the towns and places which may be assigned to them by the governor of the new settlement, who, in apportioning the lands, will distinguish between gentlemen and peasants, and those of lower degree and merit, and who will add to the possessions and better the condition of the grantees, according to the

> nature of the services rendered by them, and with a view to the promotion of agriculture and stock raising. To those who shall have labored and established a home on said lands and who shall have resided in the said settlement for a period of four years we grant the right thereafter to sell and in every other manner to exercise their free will over said lands as over their own property. And we further command that, in accordance with their rank and degree, the governor, or whoever may be invested with our authority, shall allot the Indians to them in any distribution made, so that they may profit by their labor and fines in accordance with the tributes required and the law controlling such matters.

Here were grants to subjects of Spain, which four years of residence and tillage ripened into a fee simple title, and it will be observed also that culture labor, in the compulsory service of the natives, was by allotment a corollary incident to the grant. But it was necessary, in order to ripen the rights acquired by residence and tillage into a grant of a fee simple title, that administrative action, on the application of the grantee, should be taken by the public officials.

It is provided in law 8, title 12, book 4 of the *Recopilacion* as follows:

> We command that if a petition shall be presented asking the grant of a lot or tract of land in a city or town in which one of our courts may be located, the presentation shall be made to the municipal council. If the latter shall approve the petition, two deputy magistrates

> will be appointed, who will acquaint the viceroy or municipal president with the council's judgment in the matter. After consideration thereof by the viceroy or president and the deputy magistrates, all will sign the grant, in the presence of the clerk of the council, in order that the matter may be duly recorded in the council book. If the petition shall be for the grant of waters and lands for mechanical purposes, it shall be presented to the viceroy or municipal president, who will transmit it to the council. If the latter shall vote to make the grant, one of the magistrates will carry its decision to the viceroy or president, to the end that, upon consideration of the matter by him, the proper action may be taken.

And, in the course of time, it being found that tracts of the public land were occupied without proper title papers of ownership, law 14, title 12, book 4 of the Recopilacion (Philip II, November 20, 1578; March 8, 1589, and November 1, 1591), provided:

> We having acquired full sovereignty over the Indies, and all lands, territories, and possessions not heretofore ceded away by our royal predecessors, or by us, or in our name, still pertaining to the royal crown and patrimony, it is our will that all lands which are held without proper and true deeds of grant be restored to us according as they belong to us, in order that after reserving before all what to us or to our viceroys, audiencias, and governors may seem necessary for public squares, ways, pastures, and commons in those

places which are peopled, taking into consideration not only their present condition, but also their future and their probable increase, and after distributing to the natives what may be necessary for tillage and pasturage, confirming them in what they now have and giving them more if necessary, all the rest of said lands may remain free and unencumbered for us to dispose of as we may wish.

We therefore order and command that all viceroys and presidents of pretorial courts designate, at such time as shall to them seem most expedient, a suitable period within which all possessors of tracts, farms, plantations, and estates shall exhibit to them, and to the court officers appointed by them for this purpose, their title deeds thereto. And those who are in possession by virtue of proper deeds and receipts, or by virtue of just prescriptive right shall be protected, and all the rest shall be restored to us to be disposed of at our will.

From the foregoing it is clearly apparent that the Crown of Spain recognized as good titles by prescription to the public lands in the Indies, including the Philippine Islands.

But an indispensable requisite to the perfection of such titles was that evidence of grants from the Crown, or of possession and occupation for the required length of time, should be presented to administrative officers of the Crown, who, after being satisfied of the sufficiency of the evidence, should "*confirm them* [the natives] *in what they now have, and give them more if*

necessary," and deliver to such persons written evidence of title from the Crown (p. 126).

The administrative officers named in the law last quoted were ordered to designate a suitable period within which interested persons and claimants should present their proofs for examination and determination, and the law provides that as to the public lands to which no proved title had been made, and as to which the administrative officers had given no document of title, they "*may remain free and unincumbered for us* [the Crown] *to dispose of as we may wish,*" and "*shall be restored to us to be disposed of at our will.*"

In the preamble of this law it is distinctly stated that all the public lands in the Indies belong to the Crown which had not been granted by Philip II, or in his name, or by the kings who preceded him, thus precluding the idea that there were *any* lands in the Indies under Spanish domination not so granted, that did not belong to the King; it precludes also, the idea or contention that the Crown was not the owner of ungranted lands, or those to which claimants had not received title papers from the administrative officers, even although they had been in the immemorial adverse occupation of private persons. What period of prescription was fixed by the administrative officers under this law does not appear; but, later, in 1646, law 19 of the same title fixed the period at ten years.

Another step in the legislation directed to this subject was the royal cedula of October 15, 1754 (4 Leg-

islacion Ultramarina, 673, articles 3, 4, and 5), as follows:

> 3. Upon each principal subdelegate's appointment, which will be made in the manner prescribed in article 1 of this cedula, and upon his receipt of these instructions, of which every principal subdelegate already designated or who may hereafter be appointed shall be furnished a copy, said subdelegate will in his turn issue a general order to the courts in the provincial capitals and principal towns of his district, directing the publication therein, in the manner followed in connection with the promulgation of general orders of viceroys, presidents, and administrative courts in matters connected with my service, of these instructions, to the end that any and all persons who, since the year 1700 and up to the date of the promulgation and publication of said order, shall have occupied royal lands, whether or not the same shall be cultivated or tenanted, may, either in person or through their attorneys or representatives, appear and exhibit to said subdelegates the titles and patents by virtue of which said lands are occupied. Said subdelegates will designate as the period within which such documents must be presented a term sufficient in length and proportionate to the distance the interested party may have to travel for the purpose of making the presentation. Said subdelegates will at the same time warn the parties interested that in case of their failure to present their title deeds within the term designated, without a just and

valid reason therefor, they will be deprived of and evicted from their lands, and they will be granted to others.

4. If it shall appear from the titles or instruments presented, or if it shall be shown in any other legal manner, that said persons are in possession of such royal lands by virtue of a sale or adjustment consummated by duly authorized subdelegates prior to the said year 1700, although such action may not have been confirmed by my royal person, or by a viceroy or president, they shall in no wise be molested, but shall be left in the full and quiet possession of the same; nor shall they be required to pay any fee on account of these proceedings, in accordance with law 15, title 12, book 4, of the *Recopilacion de las Indias*, above cited. A note shall be made upon said title deeds to the effect that this obligation has been complied with, to the end that the owners of such royal lands and their successors may hereafter be free from denunciation, summons, or other disturbance in their possession.

Where such possessors shall not be able to produce title deeds it shall be sufficient if they shall show that ancient possession, as a valid title by prescription; provided, however, that if the lands shall not be in a state of cultivation or tillage, the term of three months prescribed by law 11 of the title and book cited, or such other period as may be deemed adequate, shall be designated as the period within which the lands must be reduced to cultivation, with the warning that in case of their failure so to do the

lands will be granted, with the same obligation to cultivate them, to whomsoever may denounce them.

5. Likewise neither shall possessors of lands sold or adjusted by the various subdelegates from the year 1700 to the present time be molested, disturbed, or denounced, now or at any other time, with respect to such possession, if such sales or adjustments shall have been confirmed by me, or by the viceroy or the president of the court of the district in which the lands are located while authorized to exercise this power. In cases where the sales or adjustments shall not have been so confirmed, the possessors will present to the courts of their respective districts and to the other officials hereby empowered to receive the same, a petition asking for the confirmation of said sales and adjustments. After the proceedings outlined by the subdelegates in their order with respect to the measurement and valuation of the said lands, and with reference to the title issued therefor, shall have been duly completed, said courts and officials will make an examination of the same for the purpose of ascertaining whether the sale or adjustment has been made without fraud and collusion, and for an adequate and equitable price, and a similar examination shall be made by the prosecuting attorney of the district, to the end that, in view of all the proceedings and the purchase or adjustment price of the land, and the *media anata* having been duly, etc., paid into the royal treasury, as well as such additional sum

> as may be deemed proper, there will be issued to the possessor, in my royal name, a confirmation of his title, by virtue of which his possession and ownership of lands and waters which it represents will be fully legalized, to the end that at no time will he or his heirs or assigns be disturbed or molested therein.

These provisions were much more stringent than any which had preceded them, both in the warning (article 3) to occupants of public lands to present their instruments evidencing a right to possession for administrative adjudication, on pain of eviction, and providing (article 4), among other things, that proof of "*ancient possession*," i. e., possession prior to 1700, or for fifty-four years, would constitute a sufficient title by prescription, and would entitle the claimant to confirmation of the same.

Following the royal cedula of 1754, there were various royal orders (in 1797, 4 Legislacion Ultramarina, p. 688; in 1862, Gaceta de Manila, November 15,1864; and in 1876, Guia del Comprador Terrenos, p. 5) directing the observance of the cedula of 1754, and urging occupants of public lands, who had no grant or administrative title, to seek an adjustment (*composiciòn*) under existing laws.

The regulation of titles remained in this condition until the regulations of June 25, 1880 (Gaceta de Manila, September 10, 1880), were approved by royal decree. These are the most important of the modern legislative acts of Spain upon the matter of "adjust-

ment" (*composiciòn*) of titles to public lands, as distinguished from their sale, and are as follows:

Preface:

> SIR: The uncertain, and it may be said the precarious, state of real property in various parts of the Philippine Islands, as yet sparsely populated; the necessity for encouraging the cultivation of these lands; the advantage of increasing the wealth and products of the archipelago; the immense and immediate profit which must result to all classes of interests, public as well as private, from the substitution of full ownership, with all the privileges which by law accompany this real right, for the mere possession of the lands, have long counseled the adoption of the provisions contained in the following regulations, which, after consultation with the Philippine council, and in conformity with an order passed at a full meeting of the council of state, the subscribing minister has the honor to submit for the royal approval. These regulations refer not only to tenants of royal lands in good faith and by virtue of a valid title, but also to those who, lacking these, may either by themselves reducing such lands to cultivation or by the application of intelligence and initiative, causing their cultivation by others who lack these qualities, be augmenting the wealth of the archipelago. (Disposciones oficiales del Ramo de Montes de Filipinas, p. 34.)

The *regulations* are, in part, as follows:

> Upon the suggestion of the colonial minister, made in conformity with the decree of

the full meeting of the council of state, I hereby approve the attached regulations for the adjustment of royal lands wrongfully occupied by private individuals in the Philippine Islands.

Articles 1, 4, 5, 8, and part of article 6 are as follows:

ART. 1. For the purposes of these regulations, and in conformity with law 14, title 12, book 4, of the Recompilation of Laws of the Indies, the following will be regarded as royal lands: All lands whose lawful ownership is not vested in some private person, or, what is the same thing, which have never passed to private ownership by virtue of cession by competent authorities, made either gratuitously or for a consideration.

ART. 4. For all legal effects those will be considered proprietors of the royal lands herein treated who may prove that they have possessed the lands without interruption during the period of ten years by virtue of a good title and in good faith.

ART. 5. In the same manner, those who without such title deeds may prove that they have possessed their said lands without interruption for a period of twenty years, if in a state of cultivation, or for a period of thirty years, if uncultivated, shall be regarded as proprietors thereof. In order that a tract of land may be considered cultivated it will be necessary to show that it has been broken within the last three years.

ART. 6. Interested parties not included within the two preceding articles may legalize

their possession, and thereby acquire the full ownership of the said lands, by means of adjustment proceedings, to be conducted in the following manner: * * *

(5) Those who, entirely without title deeds, may be in possession of lands belonging to the state and have reduced said lands to a state of cultivation may acquire the ownership thereof by paying into the public treasury the value of the lands at the time such possessors or their representatives began their unauthorized enjoyment of the same.

(6) In case said lands shall never have been plowed, but are still in a wild state, or covered with forests, the ownership of the same may be acquired by paying their value at the time of the filing of the claim, as stated in the fourth paragraph.

Art. 8. If the interested parties shall not ask an adjustment of the lands whose possession they are unlawfully enjoying within the time of one year, or, the adjustment having been granted by the authorities, they shall fail to fulfill their obligation in connection with the compromise, by paying the proper sum into the treasury, the latter will, by virtue of the authority vested in it, reassert the ownership of the state over the lands, and will, after fixing the value thereof, proceed to sell at public auction that part of the same which, either because it may have been reduced to cultivation or is not located within the forest zone, is not deemed advisable to preserve as the state forest reservation.

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Both the preface and the regulations show, as does all the Spanish legislation on the subject, the fairness and equity which entitled occupants of public lands under claim of "ancient possession to complete title;" yet in this, as in each preceding legislative act, order, decree, or regulation, such claim could not be ripened into a fee simple title *except by proof before an administrative officer, his affirmative action on the claim, and a compliance with the regulations prescribed.*

There is no variation from this requirement, and the declaration is plain, repeated, and never abandoned, that upon failure to comply, as above, the occupant was held to have abandoned his inchoate claim, the lands, always the property of the Crown until alienated by its proper officers upon proof required by law, were freed from the cloud of a possible title by prescription, and the occupant became a mere trespasser, without any right, and subject to ejectment by the Crown at any time.

It appears that the regulations of June 25, 1880, were the subject of inquiry directed to officers in Manila charged with their execution, and that they were answered by an administrative circular published in the Gaceta de Manila of August 11, 1881, as follows:

> Should possessors of royal lands under color of title and in good faith seek adjustment?
>
> It is evident that they must do so, for it is to them that article 4 of the regulations refers, as also the following article covers other cases of possession under different circumstances.

> It should be well understood by you, and you should in turn have it understood by others, that the adjustment of lands whose ownership has not passed to private individuals by virtue of cession by competent authorities is optional only for those within the limits of the common district (*legua comunal*) as provided by article 7. In all other cases where the interested parties shall fail to present themselves for the adjustment of the lands occupied by them they shall suffer the penalties set forth in article 8 of said regulations.

But aside from this administrative construction of the regulations of 1880, there was legislative construction of them in royal decrees dividing the public lands in the Philippines wrongfully withheld by private persons (i. e., persons who had no administrative confirmation of their titles) into groups, and providing, further, for the filing and adjustment of claims to title, and for the sale of said lands. (December 26, 1884—*Berriz Anuario*, 1888, p. 117; August 31, 1888—*Berriz Anuario*, 1888, p. 120.)

Then followed the royal decree of February 13, 1894 (Gaceta de Manila, April 17, 1894), which in its article 4 provided:

> ART. 4. The title to all agricultural lands which were capable of adjustment (*composición*) under the royal decree of the 25th of June, 1880, but the adjustment of which has not been sought at the time of the promulgation of this decree in the Gaceta de Manila, will revert to the State. Any claim to such

> lands by those who might have applied for the adjustment of the same, but who have not done so at the above-mentioned date, will not avail them in anyway or at any time.

There was no subsequent Spanish legislation, pertinent to the questions here presented, up to the time of our possession of the Philippine Islands, on August 13, 1898.

This, then, was the situation of the claim of title by plaintiff in error to the lands here in controversy under the Spanish law as it was in force on August 13, 1898:

1. Mateo Cariño was in occupation of public lands in the Philippine Islands, claiming title thereto by prescription.

2. The Spanish law in force required that all persons who claimed title to public lands by prescription should, long prior to August 13, 1898, have presented and proved their claims, have complied with the legal regulations, and have secured legal title thereto by administrative adjudication, on pain of losing all claim to said lands, of being mere trespassers under the law, and subject to ejectment at any time by the public officials of the government.

3. Mateo Cariño had not proved his claim to title to said lands by prescription, had not secured legal title thereto by administrative adjudication, the time within which he could have done so had long passed, and he was, therefore, in the eyes of the law, a mere trespasser on the public lands of the Philippine

Islands at the date when they passed from the sovereignty of Spain to the sovereignty of the United States.

His inchoate rights by occupation were wiped out, and, under the law, his position was no different than it would have been if he had taken possession of these lands on August 12, 1898, and, in the face of the specific legislation set out above, as Cariño had complied with none of the requirements, no *presumption* of a grant or of an administrative adjudication in his favor could possibly arise. These lands were absolutely a part of the crown lands of Spain at the date of the ratification of the treaty of Paris, and passed as absolutely into the ownership of the United States, unclouded by any shadow of title in Cariño, who on April 11, 1899, was a bare trespasser on said lands. He does not claim to have acquired other rights since 1898. (Brief of plaintiff in error, p. 63.)

Under the treaty of Paris (Article VIII) no property or rights which by law belong to the peaceful possession of property of all kinds were impaired, on the cession of the Philippine Islands by Spain to the United States, and under the accepted principles of international law the local laws of the former sovereign of ceded territory remain in force until altered by the law-making power of the new sovereignty, unless incompatible with the laws and customs for the fundamental principles of the government of the new sovereignty. (*Am. Ins. Co.* v. *Canter*, 1 Pet., 511; *Cross* v. *Harrison*, 16 How., 164; *Leitensdorfer* v.

Webb, 20 How., 176.) In consonance with such custom and usage, upon the cession of the Philippine Islands to the United States, the local laws of Spain, applicable to the Philippine Islands, were continued in force by the Government of the United States, in so far as they were not incompatible with the fundamental principles and genius of our Government. And among the Spanish laws continued in force was the mortgage law and the civil code. Both had been modified by the law-making powers of the United States at the time this suit was originally brought, and have since been further modified.

The first legislation by Congress with relation to lands in the Philippine Islands is contained in the act of March 2, 1901 (31 Stat., 910), in which it is provided "That no sale or lease or other disposition of the public lands or the timber thereon or mining rights therein shall be made."

On August 7, 1901, the Philippine Commission passed its act No. 190, being a code of civil procedure applicable to the Philippine Islands, in which, in its section 795, it repealed all codes, statutes, acts, decrees, and orders theretofore promulgated, enacted, or enforced in the Philippine Islands prescribing the procedure in all civil actions. (1 Phil. Laws, 378.)

On July 1, 1902, Congress enacted the organic law of the Philippine Islands, in which were included the following provisions relating to the property and rights acquired by the United States in the Philippine

Islands under the treaty of Paris, among such property being the public lands in such islands:

SEC. 12. That all the property and rights which may have been acquired in the Philippine Islands by the United States under the treaty of peace with Spain, signed December tenth, eighteen hundred and ninety-eight, except such land or other property as shall be designated by the President of the United States for military and other reservations of the Government of the United States, are hereby placed under the control of the government of said islands, to be administered for the benefit of the inhabitants thereof, except as provided in this act.

SEC. 13. That the government of the Philippine Islands, subject to the provisions of this act and except as herein provided, shall classify according to its agricultural character and productiveness, and shall immediately make rules and regulations for the lease, sale, or other disposition of the public lands other than timber or mineral lands, but such rules and regulations shall not go into effect or have the force of law until they have received the approval of the President, and when approved by the President they shall be submitted by him to Congress at the beginning of the next ensuing session thereof and unless disapproved or amended by Congress at said session they shall at the close of such period have the force and effect of law in the Philippine Islands: *Provided, That a single homestead entry shall not exceed sixteen hectares in extent.*

SEC. 14. That the government of the Philippine Islands is hereby authorized and empowered to enact rules and regulations and to prescribe terms and conditions to enable persons to perfect their title to public lands in said islands who, prior to the transfer of sovereignty from Spain to the United States, had fulfilled all or some of the conditions required by the Spanish laws and royal decrees of the Kingdom of Spain for the acquisition of legal title thereto yet failed to secure conveyance of title; and the Philippine Commission is authorized to issue patents, without compensation, to any native of said islands, conveying title to any tract of land not more than sixteen hectares in extent, which were public lands and had been actually occupied by such native or his ancestors prior to and on the thirteenth of August, eighteen hundred and ninety-eight.

SEC. 15. That the government of the Philippine Islands is hereby authorized and empowered, on such terms as it may prescribe by general legislation, to provide for the granting or sale and conveyance to actual occupants and settlers and other citizens of said islands such parts and portions of the public domain, other than timber and mineral lands, of the United States in said islands as it may deem wise, not exceeding sixteen hectares to any one person, and for the sale and conveyance of not more than one thousand and twenty-four hectares to any corporation or association of persons: *Provided*, That the grant or sale of such lands, whether the purchase price be paid at once or in partial payments, shall be conditioned upon

actual and continued occupancy, improvement, and cultivation of the premises sold, for a period of not less than five years, during which time the purchaser or grantee can not alienate or encumber said land or the title thereto; but such restriction shall not apply to transfers of rights and title of inheritance under the laws for the distribution of the estates of decedents.

SEC. 16. That in granting or selling any part of the public domain under the provisions of the last preceding section, preference in all cases shall be given to actual occupants and settlers; and such public lands of the United States in the actual possession or occupancy of any native of the Philippine Islands shall not be sold by said government to any other person without the consent thereto of said prior occupant or settler first had and obtained: *Provided*, That the prior right hereby secured to an occupant of land who can show no other proof of title than possession shall not apply to more than sixteen hectares in any one tract. (32 Stat. L., p. 691.)

ıe foregoing sections express the wise and in-ed judgment of the Congress of the United States the disposition of public lands in the Philippine ds, based upon observations of the needs of the le rom the time of our occupation, and advised informed by the experience of the Philippine nission as to the conditions and needs of the ıitants of the Philippine Islands. In section 12 provided that all the property and rights which have been acquired in the Philippine Islands

under the treaty of Paris, "except such land or other property as shall he designated by the President of the United States for military and other reservations of the Government of the United States," are placed *under the control of the government of the Philippine Islands*, subject to no limitations whatever such as are provided in the act itself, which states the objects and purposes of the Government of the United States toward the people and lands of the Philippine Islands, namely, that they are to be "*administered for the benefit of the inhabitants hereof.*" The limitations imposed by the act are:

That the government of the Philippine Islands shall classify the public lands (other than timber or mineral lands) according to their agricultural character and shall make rules and regulations for their lease, sale, or other disposition, and that such rules and regulations shall not be effective or have the force of law until approved by the President and the Congress. (Sec. 13.)

The government is authorized and directed to make rules and regulations and to prescribe the terms and conditions to enable persons to perfect their titles to public lands who, prior to the transfer of sovereignty, had fulfilled all or some of the laws in force at the time of the change of sovereignty, and yet had failed to secure conveyance of title. (Sec. 14.) Sections 15 and 16 grant to actual "*occupants and settlers*" of the public lands certain "*prior rights of purchase,*" and a sale is prevented in such cases without the consent of such settlers and occupants, or until

by their own laches they have forfeited their preference rights.

Pursuant to the authority and direction contained in section 13 the capabilities of the agricultural lands have been ascertained; "the rules and regulations" referred to are contained in act 926 of the Philippine Commission, entitled "The public land law," enacted October 7, 1903, but by its section 78 the province of Benguet, among others, was excepted from its provisions. Subsequently, in act 1224 of the Philippine Commission, enacted and in force August 31, 1904, it was provided that the court of land registration, established by the act of the Philippine Commission numbered 436 (the land registration act), should have no jurisdiction over lands lying within the province of Benguet, among others, or of lands set apart for military reservations:

> *And provided further*, That said court may have jurisdiction over applications for registration of title to land situated in any of the provinces aforesaid whenever the applicant has received a written royal grant, decree, or title to such land from the Kingdom of Spain, and shall file such royal grant, decree, or title with his application for registration.

The rules and regulations promulgated by the Philippine Commission in act No. 926, in accordance with the authority and direction contained in the act of Congress of July 1, 1902, provided in the case of certain "*actual occupants and settlers*" mentioned in sections 15 and 16 of the act of Congress, and by

the following paragraphs of section 54 of said Philippine act No. 926:

> 4. All persons who were entitled to apply and did apply for adjustment or composition of title to lands against the Government under the Spanish laws and royal decrees in force prior to the royal decree of February thirteenth, eighteen hundred and ninety-four, but who failed to receive title therefor through no default upon their part;
>
> 5. All persons who were entitled to a gratuitous title to public lands by "possessory proceedings" under the provisions of articles nineteen and twenty of the royal decree of the King of Spain issued February thirteenth, eighteen hundred and ninety-four, and who, having complied with all the conditions therein required, failed to receive title therefor through no default upon their part; and
>
> 6. All persons who by themselves or their predecessors in interest have been in the open, continuous, exclusive, and notorious possession and occupation of agricultural public lands, as defined by said act of Congress of July first, nineteen hundred and two, under a bona fide claim of ownership except as against the Government, for a period of ten years next preceding the taking effect of this act, except when prevented by war or *force majeure*, shall be conclusively presumed to have performed all the conditions essential to a government grant and to have received the same, and shall be entitled to a certificate of title to such land under the provisions of this chapter.

As before stated, during the time covered by the litigation of this case in the Philippine Islands, the province of Benguet had by legal enactment been withdrawn from the operation of act 926, and therefore the plaintiff in error took, as he now disclaims, no rights thereunder. It is true that the operation of act 926 has since been extended to include the province of Benguet by resolution of the Philippine Commission, dated August 5, 1904, but this would give to plaintiff in error, if anything, only the right to institute a proceeding *now*, claiming its benefits.

On October 10, 1903, the Government of the United States, by proclamation of the President, set aside a tract of land for a military post and reservation which includes a large portion of the land in question, and has since been occupied by the army of the United States for the purposes specified. This reservation was exactly set forth by metes and bounds. The contention of the plaintiff in error (his brief, pp. 7–8) that the proceeding instituted by him in February, 1901, in the court of first instance of the province of Benguet, under articles 390, et seq. of the mortgage law, is of no importance to a determination of the question presented in this case, and has no effect other than the possible one of adding to the force of the testimony as to his "ancient possession," which fact is abundantly established by other evidence, and is not in controversy.

ARGUMENT.

I.

This court has not jurisdiction to review this case upon writ of error.

Section 10 of the act of July 1, 1902 (32 Stat., 691, 695), provides:

> That the Supreme Court of the United States shall have jurisdiction to review, revise, reverse, modify, or affirm the final judgments and decrees of the supreme court of the Philippine Islands in all actions, cases, causes, and proceedings now pending therein or hereafter determined thereby in which the Constitution or any statute, treaty, title, right, or privilege of the United States is involved, or in causes in which the value in controversy exceeds twenty-five thousand dollars, or in which the title or possession of real estate exceeding in value the sum of twenty-five thousand dollars, to be ascertained by the oath of either party or of other competent witnesses, is involved or brought in question; and such final judgments or decrees may and can be reviewed, revised, reversed, modified, or affirmed by said Supreme Court of the United States *on appeal or writ of error by the party aggrieved, in the same manner, under the same regulation, and by the same procedure, as far as applicable,* as the final judgments and decrees of the circuit courts of the United States.

It is fundamental that this court can review actions at law pending in circuit courts of the United States only by writ of error and proceedings in equity only

by appeal. It therefore becomes necessary to determine whether this is an action at law or a proceeding in equity.

The proceedings for the adjudication and registration of titles to lands in the Philippine Islands provided for in Act No. 496 of the Philippine Commission are, in their nature, actions in equity rather than actions at law.

The material sections of the act follow:

Section 2 confers upon the court of land registration jurisdiction of all applications for the registration of title to lands in the Philippine Islands "with power to hear and determine all questions arising upon such applications," subject to the right of appeal. "The proceedings upon such applications shall be proceedings in rem against the land and the buildings and improvements thereon, and the *decrees* shall operate directly on the land and the buildings and improvements thereon, and vest and establish title thereto."

Section 14 provides that "every *order, decision, and decree* of the court of land registration shall be subject to *appeal* to the court of first instance of the city or province where the land lies, concerning which the *order, decision, or decree* appealed from was made; but the proceeding shall not pass to the court of first instance for review upon the appeal until final determination by the court of land registration of the whole proceeding in which the *order, decision, or decree appealed* from was made. The appeal shall be made and entered within thirty days from the date of the final *order, decision, or decree.*" The case "shall be tried

by the court of first instance as other actions are tried in that court. All competent testimony which has been taken in writing before the court of land registration may be used on the trial in the court of first instance. Questions of law arising in the court of first instance on trial of the appeal may be taken to the Supreme Court for revisions by any party aggrieved, in the same manner as in ordinary actions in the court of first instance."

Section 16 provides that "if the party appealing does not prosecute his appeal within the time limited, the original *order, decision, or decree* shall stand as if no appeal had been taken."

Section 21 prescribes a form of petition in which, *inter alia*, the applicant asks that his title be "registered and confirmed."

Section 35 provides that in the case of an order upon default "the court may enter a decree *confirming* the title of the applicant and ordering registration of the same."

> SECTION 37. If in any case the court finds that the applicant has not proper title for registration, a *decree* shall be entered dismissing the application. * * *
>
> SECTION 38. If the court, after hearing, finds the applicant has title as stated in his application, and proper for registration, *a decree of confirmation and registration* shall be entered. Every decree of registration shall bind the land and *quiet title thereto*, subject only to the exceptions stated in the following section. It

> shall be conclusive upon and against all persons, including the Insular Government and all the branches thereof, whether mentioned by name in the application, notice, or citation, or included in the general description "To all whom it may concern."

Section 40 provides that every decree of registration shall contain a description of the land as finally determined by the court and shall set forth the estate of the owner and liens, incumbrances, etc., thereon.

Prior to the American occupation of the islands there was, for the most part, no system by which title could be recorded or registered. The obvious purpose of the land-registration act was to make title to all lands in the Philippine Islands definite and certain through a recording system and by decrees confirming and quieting titles. In doing this many disputes as to title, boundaries, incumbrances, etc., would necessarily arise. Accordingly, the law provides that these questions shall be determined at the time application is made for registration of the lands.

In the old courts of chancery a bill of peace and bill *quia timet*, i. e., to remove a cloud upon the title of real estate, could be maintained. The characteristics of these two forms of bills are best described in *Holland* v. *Challen* (110 U. S., 15):

> A bill of peace against an individual reiterating an unsuccessful claim to real property would formerly lie only where the plaintiff was

in possession and his right had been successfully maintained. The equity of the plaintiff in such cases arose from the protracted litigation for the possession of the property which the action of ejectment at common law permitted. That action being founded upon a fictitious demise, between fictitious parties, a recovery in one action constituted no bar to another similar action or to any number of such actions. A change in the date of the alleged demise was sufficient to support a new action. Thus the party in possession, though successful in every instance, might be harassed and vexed, if not ruined, by a litigation constantly renewed. To put an end to such litigation and give repose to the successful party, courts of equity interfered and closed the controversy. To entitle the plaintiff to relief in such cases the concurrence of three particulars was essential: He must have been in possession of the property, he must have been disturbed in its possession by repeated actions at law, and he must have established his right by successive judgments in his favor. Upon these facts appearing the court would interpose and grant a perpetual injunction to quiet the possession of the plaintiff against any further litigation from the same source. It was only in this way that adequate relief could be afforded against vexatious litigation and the irreparable mischief which it entailed. Adams on Equity, 202; Pomeroy's Equity Jurisprudence, 248; *Stark* v. *Starrs*, 6 Wall., 402; *Curtis* v. *Sutter*, 15 Cal., 259; *Shepley* v. *Rangeley*, 2 Ware, 242;

Devonsher v. *Newenham*, 2 Schoales & Lef., 199.

* * * * *

A bill *quia timet*, or to remove a cloud upon the title of real estate, differed from a bill of peace in that it did not seek so much to put an end to vexatious litigation respecting the property, as to prevent future litigation by removing existing causes of controversy as to its title. It was brought in view of anticipated wrongs or mischiefs, and the jurisdiction of the court was invoked because the party feared future injury to his rights and interests. Story's Equity, 826. To maintain a suit of this character it was generally necessary that the plaintiff should be in possession of the property, and, except where the defendants were numerous, that his title should have been established at law or be founded on undisputed evidence or long-continued possession. *Alexander* v. *Pendleton*, 8 Cranch, 462; *Peirsoll* v. *Elliott*, 6 Pet., 95; *Orton* v. *Smith*, 18 How., 263.

In order to maintain the action of ejectment at common law, possession of the land by the defendant was essential. As already pointed out by this court, a bill of peace or bill to remove a cloud could not be maintained unless the plaintiff was in possession. In the development of this country it has been found necessary to provide a procedure for trying and quieting titles when neither party is in possession of the land, and now nearly every State has a statute by which relief can be obtained in such cases. In

referring to such statutes this court in *Holland* v. *Challen*, *supra*, said:

> It is certainly for the interest of the State that this jurisdiction of the court should be maintained, and that causes of apprehended litigation respecting real property, necessarily affecting its use and enjoyment, should be removed; for so long as they remain they will prevent improvement and consequent benefit to the public. It is a matter of every-day observation that many lots of land in our cities remain unimproved because of conflicting claims to them. The rightful owner of a parcel in this condition hesitates to place valuable improvements upon it, and others are unwilling to purchase it, much less to erect buildings upon it, with the certainty of litigation and possible loss of the whole. And what is true of lots in cities, the ownership of which is in dispute, is equally true of large tracts of land in the country. The property in this case, to quiet the title to which the present suit is brought, is described in the bill as unoccupied, wild, and uncultivated land. Few persons would be willing to take possession of such land, inclose, cultivate, and improve it, in the face of a disputed claim to its ownership. * * * It is manifestly for the interest of the community that conflicting claims to property thus situated should be settled, so that it may be subjected to use and improvement.

This statement is particularly applicable to conditions in the Philippines and the object to be accomplished by the land registration act.

In the early history of Kentucky a law was passed providing that any person having a legal title to possession of lands might institute a suit against any other person setting up a claim thereto and the defendant might be decreed to release his claim. A bill in equity was filed, under this section, in the Federal Circuit Court in the case of *Clark* v. *Smith* (13 Pet., 195).

As pointed out in the case of *Holland* v. *Challen*, this bill, in the case of *Clark* v. *Smith*, was a departure from the requirements of the old chancery proceedings in that it did not show disturbance of possession and adjudication sustaining title. The court held that a federal court of equity had jurisdiction of it, saying in part (pp. 202, 203):

> Conflicts of title were unfortunately so numerous that no one knew from whom to buy or take lands with safety, nor could improvements be made without great hazard by those in possession who had conflicting claims hanging over them, and which might thus continue for half a century; the writ of right being limited to fifty years in some cases—that is, where it was brought upon the seizin of an ancestor or predecessor—and to thirty years if on the demandant's own seizin. During all which time the party in possession had no power to litigate, much less to settle the title at law; for he might be harassed by many actions of ejectment and his peace and property destroyed, although always successful; by no means an uncommon occurrence. This evil it was the object and policy of the legis-

> lature to cure, not so much by prescribing a mode of proceeding as by conferring a right on him who had the better title, and the possession, to draw to him the outstanding inferior claims. * * * Kentucky has the undoubted power to regulate and protect individual rights to her soil and to declare what shall form a cloud on titles; and having so declared, the courts of the United States, by removing such clouds, are only applying an old practice to a new equity created by the legislature, having its origin in the peculiar condition of the country. * * * The state legislatures certainly have no authority to prescribe the forms and modes of proceeding in the courts of the United States, but having created a right and at the same time prescribed the remedy to enforce it, if the remedy prescribed is substantially consistent with the ordinary modes of proceeding on the chancery side of the federal courts, no reason exists why it should not be pursued in the same form as in the state courts; on the contrary, propriety and convenience suggest that the practice should not materially differ where titles to lands are the subjects of investigation. And such is the constant course of the federal courts.

In *Holland* v. *Challen*, supra, a bill in equity to quiet title was filed in the Circuit Court, under a Nebraska statute, which authorized the bringing of such a bill whether the plaintiff was in possession or not. The court held that the equity jurisdiction of the circuit courts should be extended to embrace such

bill. The court said, in part (110 U. S. at pp. 4–25):

> *The truth is that the jurisdiction to relieve the holders of real property from vexatious claims to it casting a cloud upon their title, and thus disturbing them in its peaceable use and enjoyment, is inherent in a court of equity; and though conditions to its exercise have at different times been prescribed by that court, both in England and in this country, they may at any time be changed or dispensed with by the legislature without impairing the general authority of the court.* Pomeroy's Equity Jurisprudence, par. 1398. The equitable rights of parties in Nebraska claiming the legal title to real property are simply enlarged by its statute, not changed in character. And the language used by this court, speaking by Mr. Justice Bradley, in the *Broderick Will Case*, 21 Wall., 520, is appropriate here: "Whilst it is true that alterations in the jurisdiction of the state courts can not affect the equitable jurisdiction of the circuit courts of the United States, so long as the equitable rights themselves remain, yet an enlargement of equitable rights may be administered by the circuit courts as well as by the courts of the State." And it may be affirmed of this case, what was said as probably true of that one, that it is "a case in which an enlargement of equitable rights is affected, although presented in the form of a remedial proceeding." "Indeed," as the court there observed, "much of equitable jurisdiction consists of better and more effective remedies for attaining the rights of parties."

No adequate relief to the owners of real property against the adverse claims of parties not in possession can be given by a court of law. If the holders of such claims do not seek to enforce them, the party in possession, or entitled to the possession—the actual owner of the fee—is helpless in the matter unless he can resort to a court of equity.

It does not follow that by allowing in the federal courts a suit for relief under the statute of Nebraska, controversies properly cognizable in a court of law will be drawn into a court of equity. There can be no controversy at law respecting the title to or right of possession of real property when neither of the parties is in possession. An action at law, whether in the ancient form of ejectment or in the form now commonly used, will lie only against a party in possession. Should suit be brought in the federal court, under the Nebraska statute, against a party in possession there would be force in the objection that a legal controversy was withdrawn from a court of law; but that is not this case, nor is it of such cases we are speaking. Undoubtedly, as a foundation for the relief sought, the plaintiff must show that he has a legal title to the premises, and generally that title will be exhibited by conveyances or instruments of record, the construction and effect of which will properly rest with the court. Such, also, will generally be the case with the adverse estates or interests claimed by others. This was the character of the proofs establishing the title of the complainant in *Clark* v. *Smith*, already cited. But

> should proofs of a different character be produced, the controversy would still be one upon which a court of law could not act. It is not an objection to the jurisdiction of equity that legal questions are presented for consideration which might also arise in a court of law. If the controversy be one in which a court of equity only can afford the relief prayed for, its jurisdiction is unaffected by the character of the questions involved.

This case has been frequently referred to with approval and applied.

These cases are conclusive authority that the proceeding provided for by the act of land registration is of equitable nature. That act authorizes the commencement of a proceeding to confirm and quiet title to lands, whether or not the applicant or any other person is in possession. In this respect it is exactly like the state statutes, such as the one involved in the case of *Holland* v. *Challen*, *supra*. The fact that where it appears in the bill of application that some party other than the complainant or applicant is in possession of the lands in question, courts of equity in this country will not entertain a suit to quiet title, as there is an adequate remedy at law by ejectment, is immaterial in this case, for it appears by the application that the applicant is in possession of the land. Moreover, the whole proceeding and relief sought, even in a case where persons other than the applicant are in possession, are equitable and it would be unreasonable to call it an action at law.

The only action at law in our jurisprudence in which the title to land can be tried is ejectment. That, however, is a mixed action and not an action in rem, as it is expressly provided the proceeding under the land registration act shall be. An action in trespass in which questions relating to boundaries are sometimes tried could hardly be said to be an action to determine the title to land. That, however, is a personal action, and, like ejectment, bears no analogy to the proceeding under this act.

The whole proceeding in the Philippine courts, prescribed by the act, with one exception, to be hereafter noted, follows exactly, in form and substance, our proceedings in equity rather than actions at law; the trial is by the court, which determines questions of fact and of law; the method of review in the Philippine courts is by appeal, not by writ of error. The adjudication of the court is by decree, not by judgment. The act throughout refers to the order, decision, or decree of the court, and expressly provides that its final determination shall be by decree. Only in one instance is the word *judgments* used, and that is in section 17, which provides that the court in all matters over which it has jurisdiction may enforce its orders, judgments, or decrees in the same manner as orders, judgments, or decrees are enforced by judgments in the Court of First Instance. The use of the word "judgments" in this section manifestly is without importance, and does not detract in any way from the force of the other positive provisions of

the statute which make it clear that the adjudication of the court is by decree rather than by judgment. In this connnection it is to be noted that section 10 of the act of July 1, 1902, above referred to, gives this court power to review "judgments and decrees" by writ of error or appeal; that is, judgments may be reviewed by writ of error and decrees by appeal. In cases arising under the land registration act, the adjudication is by decree, and therefore, under the express language of said section 10 it can be reviewed only by appeal.

It may possibly be suggested that as section 14 of the land registration act provides that the Supreme Court of the Philippine Islands can review decisions of the Court of First Instance only upon matters of law, and as it is a general rule that writs of error bring up questions of law, and appeals both questions of law and fact, that, therefore, the proper procedure to review decisions of the Supreme Court of the Philippine Islands in these cases is by writ of error. But such a suggestion is readily seen to be fallacious.

In the first place it is very doubtful whether the effect of section 14 is to limit the power of review by this court to questions of law only. By the act of Congress of July 1, 1902 (32 Stat., 691), Congress provided, in substance, that decrees of the Supreme Court of the Philippine Islands in equity cases can be reviewed by this court by appeal, which necessarily means that questions of fact as well as of law

are to be reviewed by this court in such cases. The thing which is to be reviewed is the decree which, unless expressly restricted, involves consideration of facts and law. It does not necessarily follow that because by the local laws of the Philippine Islands the Supreme Court of the islands in reviewing the decree of the Court of First Instance is limited to questions of law that this court in reviewing the same decree is likewise limited; indeed, Congress seems to have expressed the contrary view in the act of July 1, 1902. It may well be argued, therefore, that although the Supreme Court of the Philippine Islands in its review of the case was limited to questions of law, yet when the case comes into this court by appeal the whole case, including questions of fact as well as of law, is open to review. If such is the case the suggestion above made is clearly without foundation. However, if it is decided that because of section 14 of the land registration act this court is limited to a review of questions of law, the proper method to secure such review is by appeal.

In *Dower* v. *Richards* (151 U. S., 658) this court reviewed the history of legislation giving to this court appellate jurisdiction upon writ of error and appeal. The court said, in part (pp. 663–664):

> In the legislation of Congress, from the foundation of the Government, a writ of error, which brings up matter of law only, has always been distinguished from an appeal, which, *unless expressly restricted*, brings up both law and fact.
>
> * * * * *

In the first judiciary act the whole appellate jurisdiction of this court was limited to matters of law. While an appeal lay from the District Court to the Circuit Court in admiralty cases, neither the judgments or decrees of the Circuit Court, whether in law, equity, or admiralty, nor judgments or decrees of the highest court of a State, could be reviewed by this court except by writ of error. Act of September 24, 1789, c. 20, §§19, 22–25; 1 Stat., 83–86.

Under that act it was held that a decree in admiralty could not be reviewed by this court in matter of fact, and Chief Justice Ellsworth, after laying down the rule that the appellate jurisdiction of this court could only be exercised within the regulations prescribed by Congress, said: "It is to be considered, then, that the judicial statute of the United States speaks of an appeal and of a writ of error, but it does not confound the terms nor use them promiscuously. They are to be understood, when used, according to their ordinary acceptation, unless something appears in the act itself to control, modify, or change the fixed and technical sense which they have previously borne. An appeal is a process of civil-law origin, and removes a cause entirely, subjecting the fact, as well as the law, to a review and retrial; but a writ of error is a process of common-law origin, and it removes nothing for reexamination but the law." *Wiscart* v. *Dauchy*, 3 Dall., 327. * * *

In 1803 Congress substituted an appeal from the Circuit Court to this court, instead of a

> writ of error, in cases in equity and in admiralty; and upon such an appeal the facts, as well as the law, were open to review in both those classes of cases until 1875, when the appeal in admiralty was restricted to questions of law. * * *
>
> Judgments of the Circuit Court in actions at law have remained reviewable by writ of error only.

It is thus seen that until 1803 this court could review actions only by writ of error which was the common-law procedure. It was characteristic of this common-law procedure of review that only questions of law could be considered by the appellate court and, accordingly, the Supreme Court, though not without dissent, took the position that it could not, in any case, review any question of fact. By the act of March 3, 1803, the civil-law procedure for review was made applicable in cases of equity, and it was provided that upon such appeal a transcript of all "other proceedings of what kind soever in the cause shall be transmitted to" the Supreme Court and "that no new evidence shall be received in the said court on the hearing of such appeal." It was a characteristic of the civil-law appeal that the appellate court should review questions of fact as well as questions of law, and it is apparent from the act of 1803 Congress intended to carry this characteristic into the appeal provided for in equity cases. The court has so construed that act.

This distinction in the method of review of cases at law and in equity has continued without interruption down to the present time. The fact that Congress may in some cases limit these common-law and civil-law characteristics of writs of error and appeals by making the facts in some cases at law reviewable by the appellate court or providing that in some equity cases the findings of facts by the lower court shall be conclusive upon the appellate court would not in any way alter the procedure for obtaining a review of the case, namely, by writ of error when it is an action at law and by appeal when it is a proceeding in equity. In fact, Congress has in a number of instances done that very thing, but it has never been held that it was intended thereby to alter the method of obtaining a review.

The Tucker Act, as was held by this court in *Chase* v. *United States* (155 U. S., 480), provides that in cases of equity as well as at law the lower court shall make a finding of fact, which shall be conclusive upon the Supreme Court, which is given power to review the judgment or decree of the lower court by writ of error or appeal, whichever may be applicable. The mere fact that in equity causes arising under that statute this court has not the power to review questions of fact has not been held, and we do not think it could be reasonably held, to change the method of review in such cases from appeal to writ of error. So in the present case, an equity proceeding, the mere fact that the Philippine Commission, by limiting the power of review of the Supreme Court of the Philip-

pine Islands to questions of law, may limit the power of this court to the review of questions of law only can not be held to have the effect of altering the procedure for the review of equity causes provided for by Congress.

By the act of April 7, 1874 (18 Stat., 27), it was provided that the appellate jurisdiction of this court over the judgments and decrees of territorial courts in cases of trial by jury shall be exercised by writ of error and in all other cases by appeal, and that upon appeal a statement of facts should be made in the nature of a special verdict, and the rulings of the court on the admission or rejection of evidence shall be certified to this court. It is thus seen that while Congress has confined the power of this court in reviewing equity cases to questions of law, it has prescribed an appeal as the method of obtaining review.

By the act of June 1, 1898 (30 Stat., 428), providing for the adjustment of controversies between interstate carriers and their employees, it is provided (section 4) that the review of decisions of Circuit Courts by the Circuit Court of Appeals may be had upon appeal, but the appellate jurisdiction of that court is limited to questions of law.

In this same connection we may note that while the act of February 16, 1875 (18 Stat., 315), limited the reviewing power of this court in admiralty cases to questions of law, the proper method of obtaining a review of such cases continued to be by appeal.

For these reasons the writ of error should be dismissed.

II.

THE MERITS.

(a) What title, if any, did Mateo Cariño possess in said lands at the date of the change of sovereignty from Spain to the United States?

1. The claim made by counsel for plaintiff in error (brief, p. 13) that Cariño had any right *jure gentium* may be summarily disposed of. During the whole period of Spanish sovereignty over the Philippine Islands there had been no segregation of the tribe of Igorrotes from the body of the Philippine people as to the operation of the general law to them, in common with all others. The Spanish law nowhere distinguishes them from other inhabitants of the archipelago, nor did it ever assume a paternal or fiduciary relation toward the Igorrotes, analogous to that which the United States assumed toward the aboriginal American Indian. No reservation of land was ever set aside for the Igorrotes nor did the Spanish Government ever attempt to interfere in their internal tribal affairs; in fact, its effort to exercise governmental functions within the territory occupied by this tribe was feeble and futile.

The distinction in status between the Igorrote in his relation to the Spanish laws and the American Indian in relation to the laws of the United States is at once obvious and apparent. The cases decided by this court affecting the tribal rights of Indians have no possible application to any rights of Mateo Cariño, either *jure gentium* or otherwise, and the

cases decided by this court, and cited by plaintiff in error in his brief, have no possible application, for the reason that those cases were decided with relation to the rights of Indians conferred by treaty, or relating to tribal lands or reservations made by the Government of the United States.

2. The claim of title advanced by plaintiff in error in the court of land registration, in the court of first instance, and in the Supreme Court of the Philippine Islands has been based mainly upon "*Prescription*" as valid against the Crown of Spain, and, therefore, surviving the change of sovereignty, and required to be recognized under article 8 of the treaty of Paris and subsequent congressional legislation of the United States.

That this position is untenable is amply proven by an examination and review of the Spanish law as applied to tenancies under the conditions and upon the basis claimed by plaintiff in error. It is true that the legislation of Spain always treated native occupants of public lands in the Philippine Islands with equity and consideration as to the titles which they claimed; ample provision was made for the full protection of rights claimed under "ancient possession;" from the first legislative act of Spain relating to such titles to its last declaration upon that subject, contained in the royal decree of February 13, 1894, such claimants are empowered and urged to present their claims for adjustment (composición) and establishment, and for the issuance of documents of title con-

firming the same. In each case, however, it was a *prerequisite absolutely necessary* that evidence of such title should be submitted to the administrative officials empowered with authority for judicial determination of the same, whether the claim arose out of an alleged prior grant or immemorial occupation, and in every case warning was given to the occupants of public lands that, unless such regulations and requirements were complied with, the lands so occupied, titles to which had not been proven before the administrative officers, should revert to the Crown and become public lands of the state. Plaintiff in error may have made some effort to comply with these requirements, but it was ineffective and not pressed to the point required by law, and therefore in contemplation of law is as if it had never been made. The machinery of the law was established and the requirements were definite, the testimony adduced in support of the claim of plaintiff in error as to his truth and veracity is creditable to him, but could scarcely be held to affect titles governed by the laws in force. It is also interesting to learn from his testimony (Rec., fol. 111) that he was told by Governor Martinez that it was not necessary for him to have documents of title "*because the land belonged to us, and no one could usurp them or take them from us.*" A court would be loath to accept such a declaration, made ex parte, as a substitute or an excuse for a compliance with a law of the land. It therefore follows that at the time of the change of sovereignty from Spain to the United

States, as to the lands here in question, plaintiff in error was a mere trespasser, or "squatter," and, under the law of Spain then in force, was liable to eviction by the Crown of Spain for an unauthorized occupation of its public lands.

This, then, was his situation: His claim *jure gentium* is untenable because as a native of the Philippine Islands his rights to public land were not different, by reason of his tribal relation, from those of any other resident of said islands; and his inchoate title by prescription, requiring its submission to an administrative official, and determination by him, had been lost by his failure to avail himself of the beneficent and favorable laws of his sovereignty.

Article 8 of the treaty of Paris recognized only "*property*" of the inhabitants of the conquered or ceded territory as entitled to the respect, protection, and confirmation of the United States as the succeeding sovereignty. No obligation either under said treaty or under the accepted principles of international law rested upon the United States to recognize any claims which may at some former time have been good under the laws of Spain, and entitled to perfection, but which claimant had lost by his own laches. While the laws of Spain relating to property rights in so far as the same did not conflict with the spirit of our government were continued in force, this did not serve to revive and make effective inchoate claims which could not have been enforced under said laws during Spanish sovereignty.

(b) How is the situation of Mateo Cariño, plaintiff in error, with relation to the title of said lands, changed by legislation of the United States or of the Philippine Islands since the change of sovereignty?

It was provided under the act of Congress approved March 2, 1901 (31 Stat., 910):

> *Until a permanent government shall have been established in said* [*Philippine*] *archipelago* * * * That no sale or lease or other disposition of the public lands or the timber thereon or the mining rights therein shall be made.

This legislation continued the status of the public lands and of the occupants thereof until further action should be taken by Congress or by its created instrumentality. Then followed the organic act of July 1, 1902, which, in its sections 12 to 16, inclusive, provided for the protection of inchoate titles to lands in the Philippine Islands, similar to and including such rights as are claimed by plaintiff in error. It was not contemplated in said act, however, that the machinery, by tribunals and regulations, necessary for the determination of such rights, should be created and designated by the act of Congress. On the contrary, there was provided in said act a bill of rights, constitution, and the creation of a government for said islands, separate entirely from that of the United States, although retained under the jurisdiction of Congress. This government, so created, was empowered and directed by said act to frame and promulgate rules and regulations governing the public lands of the Philippine Islands, and all claims thereto,

and was authorized and directed to create and establish courts and tribunals for the decision of those, and of all other questions arising in the government of said islands. In pursuance of the powers so conferred, the government of the Philippine Islands established a court of land registration (act 496), and in its act 926 (land registration act), prescribed and set out in detail the rules and regulations governing the public lands of the Philippine Islands, and the titles thereto, however claimed, and of the disposition thereof. These rules and regulations govern the jurisdiction and operation of the Court of Land Registration, which was not authorized to adopt other or different jurisdiction or rules for its operation. The rules and regulations adopted in act 926 were suspended as to the province of Benguet, in which this land is situated, and there was, for said reason, no forum in which the plaintiff in error could have legally established the title claimed by him, under the rules and regulations governing the same, and the Court of Land Registration, in attempting to hear and to judicially determine his said rights, was without jurisdiction, as was held by the Court of First Instance, and has been held by the Supreme Court of the Philippine Islands in a line of cases in which this question was presented, beginning with the case of *Valenton et al.* v. *Murciano* (3 Phil. Rep., 537), in which case the court, after reviewing the Spanish legislation hereinbefore set out, held, under a claim of title by prescription: That during the period covered (1860 to 1892, more than thirty

years) "there was no law in force in these islands by which the plaintiffs could obtain the ownership of these lands by prescription, *without any action by the State*, and that the judgment below declaring the defendant owner of the lands must be affirmed." In that case the defendant had bought public lands in the Philippine Islands at a public sale held by the government in accordance with the law in force, and the sale was attacked by plaintiffs in error on the ground that their title by prescription precluded such action on the part of the government, and that the sale conferred no right or title upon the purchaser. This was followed by the case of *Cansino et al.* v. *Valdez et al* (6 Phil. Rep., 320), in which the holding in the *Valenton* case was followed, the claim being based upon analogous facts.

Then followed the case of *Tiglao* v. *The Insular Government* (7 Phil. Rep., 80). The plaintiff in that case presented a petition to the court of land registration praying to be adjudged the owner of a tract of land transferred to him by the *principalia* of a pueblo. The court held that the transfer conveyed no title, and the claimant, not having been in proper occupancy for a sufficient period to entitle him to register under the prescription set forth in Act No. 926, his petition was dismissed, and such action was confirmed by the Supreme Court, following the decision in the *Valenton* and *Cansino cases, supra.* Next followed, in the supreme court of the Philippine Islands, the case here at issue (*Cariño* v. *The Insular Government* 7 Phil.

Rep., 132). Mateo Cariño filed a petition in the court of land registration praying to be inscribed as the owner of a tract of land in the municipality of Baguio, in the province of Benguet, here at issue. Judgment was entered in the court of land registration in favor of the petitioner, from which judgment the insular government *appealed*, in accordance with the law then in force, to the court of first instance of the province of Benguet. The case was therein tried *de novo*, and judgment was entered dismissing the petition. The petitioner then brought the case to the Supreme Court of the Philippine Islands upon a bill of exceptions, and that court, in an opinion by Willard, J., in which all its members concurred, held that, Cariño not having shown any title from the government, and the land being agricultural, the case is governed by the decisions in *Valenton* v. *Murciano*, *Cansino* v. *Valdez*, and *Tiglao* v. *The Insular Government*, *supra*. (Rec., pp. 179–183.)

From the foregoing it would seem that the irrefutable conclusions are:

(1) That this court is without jurisdiction to review this case upon writ of error.

(2) That plaintiff in error, although an occupant of the lands in question by "ancient possession," prior to the change of sovereignty in the Philippine Islands from Spain to the United States, having failed to perfect said claim under the laws of Spain in force at the date of said change of sovereignty, was a mere trespasser upon the lands so occupied, and possessed no

vested right of property which, of itself, brought it within the protection and guarantee offered by the treaty of peace and accepted by international law, or the decisions of this court.

(3) That under the law no title by prescription can be obtained to agricultural lands in the Philippine Islands; that the statute of limitations did not run against the Crown of Spain in the Philippine Islands, and that there is in said islands no presumption of a grant from long occupation.

(4) That the claim of plaintiff in error, not falling under the provisions of Philippine Act No. 926 during the period of this litigation, the same was not available in his behalf; that he took no rights thereunder, and that the court of land registration of the Philippine Islands was therefore without jurisdiction to determine this case.

It is respectfully submitted that the writ of error should be dismissed or that the judgment below should be affirmed.

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